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Filing date: **03/07/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045648
Party	Plaintiff Fremantle Media North America, Inc.
Correspondence Address	Susan L. Heller Greenberg Traurig, LLP 2450 Colorado Avenue, Suite 400E Santa Monica, CA 90404 UNITED STATES latm2@gtlaw.com
Submission	Other Motions/Papers
Filer's Name	Christina M. Liu
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Signature	/cml/pjp/
Date	03/07/2008
Attachments	Motion - IDOL WRITER.pdf (20 pages)(513567 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 3,049,295
For the mark IDOL WRITER
Registered on January 24, 2006

FremantleMedia North America, Inc.,)	Cancellation No. 92045648
)	
Petitioner,)	
)	
vs.)	
)	
Britt Ventures Corporation,)	
)	
Registrant.)	
)	
)	
)	

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**MOTION TO RESUME/
MOTION TO REOPEN AND EXTEND DISCOVERY PERIOD**

Pursuant to the Board's Order dated February 12, 2008 regarding the status of the Civil Action filed by Britt Ventures Corporation, Petitioner FremantleMedia North America, Inc. ("Petitioner") hereby moves to resume this proceeding and to extend the discovery cut-off date to 90 days after this proceeding is resumed.

I. BACKGROUND

This cancellation action was suspended on January 25, 2007 pursuant to a Motion to Suspend filed on December 8, 2006 ("Motion to Suspend") by Registrant Britt Ventures

Corporation ("Registrant"). In Registrant's Motion to Suspend, Registrant indicated that it had filed a Complaint in the Superior Court of California, County of San Diego ("Court") against Phillip Elden ("Elden"), the prior owner of the IDOL WRITER registration. The state court proceeding was assigned Case No. GIC875865 ("Civil Action").

According to the Complaint filed by Registrant ("Complaint," attached hereto as Exhibit A) as well as the Cross-Complaint and First Amended Cross-Complaint filed by Elden ("Cross-Complaint," attached hereto as Exhibit B) in the Civil Action, the Civil Action involved a dispute over the ownership of the IDOL WRITER registration. In the Complaint, Registrant alleged that Elden breached the terms of their assignment contract regarding the IDOL WRITER registration by refusing to supply information necessary for Registrant to respond to Petitioner's discovery requests. In the First Amended Cross-Complaint, Elden alleged that the assignment contract regarding the IDOL WRITER registration lacked consideration and should therefore be rescinded. This Cancellation Action was thereafter suspended pending the disposition of the ownership dispute regarding IDOL WRITER in the Civil Action.

Based on records obtained from the Superior Court of San Diego County, both the Complaint and the Cross-Complaint were dismissed on December 3, 2007. A copy of the Court's Order dated December 3, 2007 is attached hereto as Exhibit C. Pursuant to the Court's dismissal of the Complaint and Cross-Complaint, it appears that the Court did not order a rescission of the assignment contract between Registrant and Elden. Petitioner's counsel has attempted to contact Registrant's counsel to confirm the status of the ownership of the IDOL WRITER registration. On February 28, 2008, Phillip Elden's attorney, Robert Steinberger, called Petitioner's counsel, explaining that he had received Petitioner's forwarded message from Registrant, and advised that Britt Ventures Corporation had agreed to transfer the IDOL WRITER registration back to Phillip Elden. Elden's attorney also stated that Elden would likely

agree to reopen the discovery period and extend the discovery dates once the proceeding is resumed, and said that he would discuss this matter with Elden and then call Petitioner's counsel in the next week. Petitioner's counsel has been unable to reach Elden's attorney since then. To date, Elden has not recorded the assignment of the IDOL WRITER registration from Britt Ventures Corporation to Phillip Elden.

Petitioner notes that, in this proceeding, the last stipulated discovery cut-off date was scheduled for December 16, 2006. Although Registrant filed the Motion to Suspend prior to this date, the Board did not rule on Registrant's Motion to Suspend until January 25, 2007. Furthermore, the Board's Order to suspend the proceeding did not state the exact date from which the proceeding would be considered suspended, and Registrant's Motion to Suspend also did not specifically request that the proceeding be considered suspended as of the date that the Motion to Suspend was filed (December 8, 2006). Assuming the proceeding was suspended only as of the date of the Board's Order, the discovery cut-off has already passed. Accordingly, Petitioner has requested that the discovery period be reopened in addition to requesting an extension of the discovery cut-off date.

Furthermore, prior to the suspension of this cancellation action, both parties had served their discovery requests, but neither party has yet responded. Registrant filed its Motion to Suspend prior to the expiration of both parties' extended response deadlines. Petitioner acknowledges that, due to the understanding that the proceeding was about to be suspended, neither party filed a request to extend the discovery period before the discovery cut-off date of December 16, 2006.

II. PETITIONER'S MOTION TO RESUME

Under T.B.M.P. § 510.02(b), Petitioner may request that the Board take further action in a proceeding that has been suspended upon notification of the final determination of the other

concurrent proceeding. Based on the Court's Order in the Civil Action (see Exhibit C), both the Complaint and the Cross-Complaint were dismissed on December 3, 2007. The Court did not order a rescission of the assignment contract between Britt Ventures Corporation and Phillip Elden; however, Elden's attorney stated to Petitioner's counsel on February 28, 2008 that Registrant had agreed to transfer the IDOL WRITER registration back to Elden. While this assignment has not yet been recorded, Petitioner believes that the outstanding issue regarding the ownership of the subject mark has been finally determined and submits that further suspension would unnecessarily prolong these proceedings. Accordingly, Petitioner requests that this cancellation action be resumed.

III. PETITIONER'S MOTION TO REOPEN DISCOVERY AND EXTEND THE DISCOVERY CUT-OFF DATE

As noted above, Petitioner's Motion to Reopen Discovery is made under the assumption that the proceeding was officially suspended after the discovery cut-off date of December 16, 2006. In the event that the Board's suspension was effective prior to this date, Petitioner submits that good cause for its request to extend the discovery cut-off date is also supported by the following circumstances.

The conflict between Registrant and Elden in the Civil Action has prevented both parties from pursuing discovery within the scheduled discovery period. Because Petitioner has not received any responses to its discovery requests, it has not been able to gather the information necessary to move forward with the proceedings. Furthermore, although Petitioner initially served its discovery requests on Elden, these requests were then forwarded to Registrant and Petitioner had no further communications with Elden concerning discovery matters during the discovery period. Because of the suspension of the proceedings and the apparent transfer of the IDOL WRITER registration back to Elden, Petitioner requires additional time to coordinate the

continuation of discovery with the correct defendant, to review the responses to its discovery requests (which have not yet been provided to Petitioner), and to conduct any necessary follow-up discovery based on these responses. Petitioner further notes that Elden has not served any discovery on Petitioner. While Registrant has served discovery requests on Petitioner, Petitioner's response deadline was extended and this proceeding was suspended before Petitioner's deadline to respond. In addition, although Petitioner has not received any further communications from Elden's attorney, Elden's attorney had previously indicated on February 28, 2008 that Elden would likely agree to reopen discovery and to extend the cut-off date.

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, made applicable to Board proceedings by 37 C.F.R. § 2.116(a), and T.B.M.P. § 509.01(b)(1), Petitioner submits that its motion to reopen the discovery period and to extend the discovery cut-off date should also be granted because Petitioner's failure to take action within the discovery period was the result of excusable neglect. Under T.B.M.P. § 509.01(b)(1), the relevant factors in the analysis of excusable neglect include: 1) the danger of prejudice to the nonmovant; 2) the length of the delay and its potential impact on judicial proceedings; 3) the reason for the delay, including whether it was within the reasonable control of movant; and 4) whether the movant acted in good faith. Petitioner submits that all of these factors support Petitioner's motion to reopen the discovery period and extend the discovery cut-off date. In addition to the information provided above, Registrant had previously indicated that Elden refused to provide information that was necessary for Registrant to respond to Petitioner's discovery requests. Accordingly, Registrant has not been able to respond to Petitioner's discovery requests, and Petitioner has not been able to conduct any follow-up discovery. Registrant and/or Elden will not be prejudiced by an extension of the discovery cut-off date because the defendant would be given additional time to gather the information and documents necessary to respond to Petitioner's discovery requests.

Furthermore, since Petitioner has not yet responded to the Registrant's discovery requests, and because Elden has not yet served any discovery on Petitioner, the defendant would also be given additional time to review Petitioner's responses and conduct any necessary follow-up discovery.

In addition, Registrant's conflict with Elden was not within the control of Petitioner. Thus, Registrant's failure to respond to Petitioner's discovery and Petitioner's failure to conduct any necessary follow-up discovery within the allotted period were not caused by Petitioner, and Petitioner did not play any significant role in the delay of discovery. Petitioner has also acted in good faith, as its request to reopen the discovery period is based on Registrant's failure to provide Petitioner with the information and documents requested by Petitioner months before the discovery cut-off date. Furthermore, Petitioner submits that the delay in discovery will not negatively impact the judicial proceedings. The discovery cut-off occurred just over a month before the proceedings were suspended, and Petitioner's testimony period had not yet commenced.

Based on all of the above, Petitioner submits that an extension of the discovery cut-off is necessary for both parties to gather the necessary information to move forward with the proceeding. Petitioner further submits that its failure to take action during the discovery period was the result of excusable neglect. Accordingly, Petitioner requests that the discovery period be reopened, and that the discovery cut-off date be extended to 90 days from the date that this proceeding is resumed.

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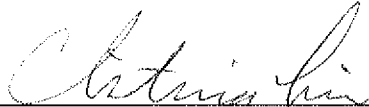
IV. RELIEF SOUGHT

WHEREFORE, FremantleMedia prays that this Cancellation Action be resumed, and that the discovery cut-off date be extended to 90 days from the date that this proceeding is resumed.

Respectfully submitted,

GREENBERG TRAURIG, LLP

Dated: March 7 2008

By: 

Susan L. Heller
Gregory A. Nylén
Christina M. Liu
2450 Colorado Avenue, Suite 400E
Santa Monica, CA 90404
Tel: (310) 586-6568
Fax: (310) 586-0564
hellers@gtlaw.com

Attorneys for FremantleMedia North America,
Inc.

EXHIBIT A

1 Daniel C. Minter (SBN 62158)
2 **DUANE MORRIS LLP**
3 101 West Broadway, Suite 900
4 San Diego, CA 92101
5 Telephone: 619.744.2200
6 Facsimile: 619.744.2201

7 Attorneys for Plaintiff
8 **BRITT VENTURES CORP.**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**
11 **CENTRAL DIVISION**

12 **BRITT VENTURES, a British Virgin Islands**
13 **corporation,**

14 **Plaintiff,**

15 **v.**

16 **PHILLIP ELDEN, an individual, and DOES 1**
17 **through 20, inclusive,**

18 **Defendants.**

Case No. **GC 875865**

COMPLAINT FOR BREACH OF
CONTRACT

19 Plaintiff Britt Ventures Corp. alleges as follows:

20 **PARTIES, JURISDICTION AND VENUE**

21 1. Plaintiff Britt Ventures Corp. ("Plaintiff") is a British Virgin Islands corporation with
22 its principal place of business in the British Virgin Islands.

23 2. Plaintiff is informed and believes, and thereon alleges that Defendant Phillip Elden
24 ("Defendant") is an individual with a principle place of residence in Temecula, California and at all
25 relevant times herein did business within the State of California.

26 4. The true names and capacities, whether individual, corporate or associate, or
27 otherwise, of the defendants herein listed as "DOES 1 through 20, inclusive" are unknown to
28 Plaintiff, who therefore sue said Defendants pursuant to California Code of Civil Procedure section
474, and Plaintiff will amend this Complaint to reflect their true names and capacities when the same

1 have been ascertained. Plaintiff is informed and believes, and thereon alleges that all defendants
2 sued under the fictitious names of "DOES 1 through 20, inclusive" are in some manner responsible
3 for the acts herein alleged.

4 5. Plaintiff is informed and believes, and thereon allege that each of the Defendants was
5 the agent, servant, representative, partner, joint venturer, alter ego, co-conspirator, and/or employee
6 of each or some of the Defendants, and in doing the acts mentioned herein was acting within the
7 course and scope of their authority as such and with the express and/or implied approval, permission,
8 knowledge, content and ratification of all Defendants.

9 6. Venue is proper in this judicial district because Defendant's obligations that are the
10 subject of this proceeding arise out of and are to be performed in this judicial district.

11 7. Plaintiff reserves the right to amend this complaint upon discovery of new evidence
12 supporting other causes of actions.

13 FACTUAL ALLEGATIONS

14 8. On or about October 11, 2006, Plaintiff and Defendant entered into a written
15 agreement entitled Intellectual Property Assignment Agreement (the "Agreement"), whereby
16 Defendant transferred intellectual property to Plaintiff as more fully described in the Agreement.

17 9. Despite repeated promises, Defendant has failed to comply with his obligations under
18 the Agreement.

19 FIRST CAUSE OF ACTION

20 (Breach of Contract)

21 10. Plaintiff realleges and incorporates by reference paragraphs 1 through 9, inclusive, as
22 though fully set forth herein.

23 11. The consideration set forth in the Agreement was, among other things, the entry into a
24 profit sharing agreement with Plaintiff. The Agreement is, as to Defendant, just and reasonable.

25 12. Plaintiff has performed all conditions, covenants and promises required to be
26 performed by Plaintiff in accordance with the terms and conditions of the Agreement.

27 13. Defendant has failed and refused, and continues to fail and refuse to perform his
28 obligations under the Agreement.

1 14. Plaintiff has been damaged as a result of Defendant's breach in an amount to be
2 determined at trial.

3 **PRAYER**

4 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

5 1. That Defendant be found in breach of the Agreement and pay damages as determined
6 by the court or jury and for specific performance of all obligations where Defendant has been found
7 in breach.

8 2. For costs of suit;

9 3. For reasonable attorneys' fees to the extent provided by law and the Agreement; and

10 4. For such other and further relief as the Court deems just and proper.

11
12 Dated: November 20, 2006

DUANE MORRIS LLP

13
14 By: 

Daniel C. Minter
Attorney for Plaintiff
Britt Ventures Corp.

EXHIBIT B

1 ROBERT J. STEINBERGER, SBN: 182471
2 JASON W. COBERLY, SBN: 227516
3 SODEN & STEINBERGER, LLP
4 550 West C Street, Suite 1710
San Diego, CA 92101
Telephone: (619) 239-3200
Facsimile: (619) 238-4581

5 Attorneys for Defendant
6 Phillip Elden

7
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 BRITT VENTURES, a British Virgin Islands
corporation,

11 Plaintiff,

12 vs.

13 PHILLIP ELDEN, an individual, and DOES 1
14 through 20,

15 Defendants.

16 PHILLIP ELDEN, an individual,

17 Cross-Complainant,

18 vs.

19 BRITT VENTURES, a British Virgin Islands
20 corporation,

21 Cross-Defendants.

22
23
24 Cross-complainant, PHILLIP ELDEN, alleges:

25 1. Cross-complainant, ELDEN, is and at all relevant times mentioned herein was a
26 resident of San Diego County.

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CASE NO.: GIC875865

CROSS-COMPLAINT FOR RESCISSION
(Rev. & Tax. Code, §§ 23301, et seq.)

2. Cross-defendant, BRITT VENTURES, is an unqualified foreign business entity not authorized to transact intrastate business in California.

3. On or about October 11, 2006, in San Diego County, California, ELDEN and BRITT VENTURES entered into a written contract entitled Intellectual Property Assignment Agreement ("Agreement").

4. BRITT has not provided ELDEN any consideration pursuant to the Agreement.

5. The Agreement is voidable pursuant to Rev. & Tax. Code, §§ 23301 et seq.

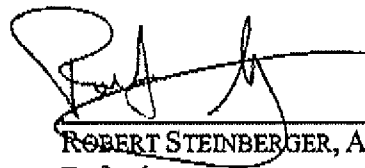
6. ELDEN has the right to declare the Agreement voidable pursuant to Rev. & Tax. Code, §§ 23301 et seq., and he accordingly rescinds the Agreement.

WHEREFORE, ELDEN prays for the following:

1. For an order declaring the Agreement rescinded;
2. Allowable attorney's fees pursuant to the Agreement or statute, if applicable;
3. For costs of suit; and
4. For such other and further relief as the court may deem proper.

Respectfully submitted,

DATED: January 11, 2007



ROBERT STEINBERGER, Attorney for
Defendant

1 ROBERT J. STEINBERGER, SBN: 182471
2 JASON W. COBERLY, SBN: 227516
3 SODEN & STEINBERGER, LLP
4 550 West C Street, Suite 1710
San Diego, CA 92101
Telephone: (619) 239-3200
Facsimile: (619) 238-4581

5 Attorneys for Defendant
6 Phillip Elden

RECEIVED

APR 16 2007

7
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

10 BRITT VENTURES, a British Virgin Islands
corporation,

11 Plaintiff,

12 vs.

13 PHILLIP ELDEN, an individual, and DOES 1
14 through 20,

15 Defendants.

16 PHILLIP ELDEN, an individual,

17 Cross-Complainant,

18 vs.

19 BRITT VENTURES, a British Virgin Islands
20 corporation,

21 Cross-Defendants.

CASE NO.: GIC875865

FIRST AMENDED CROSS-COMPLAINT
FOR RESCISSION

Dept.: 73

Judge: Steven R. Denton

22
23
24 Cross-complainant, PHILLIP ELDEN, alleges:

25 1. Cross-complainant, ELDEN, is and at all relevant times mentioned herein was a
26 resident of San Diego County.

27 2. Cross-defendant, BRITT VENTURES, is an unqualified foreign business entity not
28 authorized to transact intrastate business in California.

1 3. On or about October 11, 2006, in San Diego County, California, ELDEN and BRITT
2 VENTURES entered into a written contract entitled Intellectual Property Assignment Agreement
3 ("Agreement").

4 4. The Agreement was executed without any consideration whatsoever from BRITT.
5 ELDEN accordingly rescinds the Agreement for lack of consideration.

6 5. ELDEN is informed and believes, and thereupon alleges, that the consideration for the
7 Agreement, if any existed, failed when BRITT merged with EDR Ventures, LLC. ELDEN is
8 informed and believes, and thereupon alleges BRITT merged with EDR Ventures, LLC, with the
9 knowledge and intent that said merger would cause any consideration for the Agreement to fail.
10 ELDEN accordingly rescinds the Agreement for failure of consideration.

11 6. ELDEN's consent to execute the Agreement was obtained by BRITT's actual fraud.
12 Specifically, BRITT obtained ELDEN's consent to execute the Agreement in exchange for a
13 promise to share the profits from the development of ELDEN's intellectual property. ELDEN is
14 informed and believes, and thereupon alleges, that BRITT's promise was false, i.e., that at the time
15 BRITT made its promise, BRITT had no intention of sharing any profits with ELDEN and that
16 BRITT's true intention was to acquire title to ELDEN's intellectual property in exchange for zero
17 consideration. ELDEN is informed and believes, and thereupon alleges, that BRITT made its false
18 promise with the knowledge it was false and with the intent to deceive ELDEN into transferring
19 title to his intellectual property to BRITT for zero consideration. ELDEN justifiably relied upon
20 BRITT's false promise and executed a series of agreements purporting to transfer his intellectual
21 property to BRITT, thus causing him damages. ELDEN accordingly rescinds the agreements with
22 BRITT.

23 7. ELDEN is informed and believes, and thereupon alleges, that BRITT is a foreign
24 taxpayer that is neither qualified to do business in California, nor has a corporate account number
25 from the Franchise Tax Board. ELDEN is informed and believes, and thereupon alleges, that
26 BRITT conducts business entirely within the State of California, that all decisions made by BRITT
27 originate in California, and that BRITT is required to file tax returns with the State of California.
28 ELDEN is informed and believes, and thereupon alleges, that BRITT failed to file a tax return as

1 required under California's Revenue and Taxation Code for the relevant tax period when the
2 Agreement was made, and at a time BRITT was not qualified to do business in California at that
3 time. ELDEN accordingly alleges that the Agreement is voidable pursuant to Rev. & Tax. Code,
4 §§ 23304.1, subds. (a) and (b), and 23304.5, and ELDEN rescinds the Agreement on those
5 grounds.

6 WHEREFORE, ELDEN prays for the following:

- 7 1. For an order declaring the Agreement rescinded;
8 2. Allowable attorney's fees pursuant to the Agreement or statute, if applicable;
9 3. For costs of suit; and
10 4. For such other and further relief as the court may deem proper.

11 Respectfully submitted,

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13
14 DATED: April 16, 2007

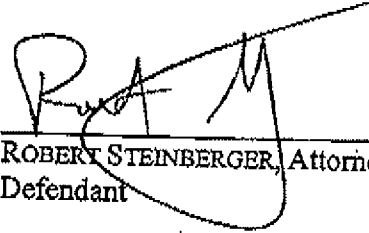
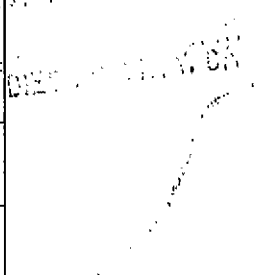

15 ROBERT STEINBERGER, Attorney for
16 Defendant
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EXHIBIT C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): ROBERT J. STEINBERGER (State Bar # 182471) SODEN & STEINBERGER, LLP 550 WEST C STREET, SUITE 1710 SAN DIEGO, CA 92101		TELEPHONE NO.: (619) 239-3200 FAX NO.: (619) 238-4581	FOR COURT USE ONLY 
ATTORNEY FOR (Name): Insert name of court and name of judicial district and branch court, if any: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO HALL OF JUSTICE Branch			
PLAINTIFF/PETITIONER: BRITT VENTURES DEFENDANT/RESPONDENT: PHILLIP ELDEN			
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): BREACH OF CONTRACT / RESCISSION			CASE NUMBER: GIC875865
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -			

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☒ Complaint (2) ☐ Petition
 (3) ☒ Cross-complaint filed by (name): **PHILLIP ELDEN**
 (4) ☐ Cross-complaint filed by (name):
 (5) ☒ Entire action of all parties and all causes of action
 (6) ☐ Other (specify):*

on (date): **JANUARY 11, 2007**

on (date):

Date: **10-31-07****JEFFREY PATRICK LENDRUM**(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only or of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date: **10/31/07****ROBERT J STEINBERGER**(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(SIGNATURE)

Attorney or party without attorney for:

- ☐ Plaintiff/Petitioner ☒ Defendant/Respondent
☒ Cross-complainant

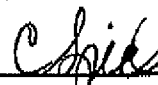
(To be completed by clerk)

3. ☒ Dismissal entered as requested on (date): **11/14/07**
 4. ☐ Dismissal entered on (date):
 as to only (name):
 5. ☐ Dismissal not entered as requested for the following reasons (specify):

6. ☒ a. Attorney or party without attorney notified on (date): **DEC 03 2007**
 b. Attorney or party without attorney not notified. Filing party failed to provide
☐ a copy to conformed ☐ means to return conformed copy

Date: **DEC 03 2007**

Clerk, by



Deputy

Page 1 of 1

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **MOTION TO RESUME / MOTION TO REOPEN AND EXTEND DISCOVERY PERIOD** upon Registrant by depositing one copy thereof in the United States Mail, first-class postage prepaid, on March 4, 2008, addressed as follows:

Michelle A. Hon
Duane Morris, LLP
101 West Broadway, Suite 900
San Diego, CA 92101

I also certify that a courtesy copy of the **MOTION TO RESUME / MOTION TO REOPEN AND EXTEND DISCOVERY PERIOD** is also being sent via United States Mail, first-class postage prepaid, on March 4, 2008, to

Robert J. Steinberger
Soden & Steinberger, LLP
550 W. C Street, Suite 1710
San Diego, CA 92101



Pamela Pascual
Trademark Paralegal